

R. Bell

Canada

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# SPEECH

DELIVERED BY

MR. MACDONALD,

BEFORE THE

COMMITTEE APPOINTED TO EXAMINE THE  
CHARGES PREFERRED BY HIM

AGAINST

MR. BROWN.

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*The* EDITH *and* LORNE PIERCE  
COLLECTION *of* CANADIANA



*Queen's University at Kingston*





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Mr. Macdonald—In making a short *resumé* of this case, I will not allude to the causes which have led to those charges being brought under the consideration of the Committee. It must be apparent to every one who was present when those charges were made, that they do not come within the scope of your reference. The language I used was a breach of Parliamentary courtesy, for which I was amenable to the discipline of the House, and which I regret ; but at the same time I must say that the language was only used after peculiar and bitter provocation. Mr. Brown has said that he was surprised that evidence should be brought forward, after eight years had elapsed, to support those charges, after eight years had elapsed since the transactions occurred on which they were founded ; and that it was unheard of and monstrous that such evidence should be received. That evidence was offered by me and received by you in consequence of Mr. Brown having himself asked for the appointment of the Committee. The Committee will remember that I did not settle the language of the charges in the order of reference. That was done by Mr. Brown conjointly with myself, and not at all to my satisfaction, for the language that I used was not taken down by the clerk at the time. It ought to have been a matter of evidence, and the evidence of Members of the House should have been taken ; and I should have been called on to prove the statement that I made. But the matter stands as it is before you ; and it

appears to be the general feeling of the House that I should prove the charges I have made if possible.

Mr. Brown has endeavored to draw a distinction between the charges brought against him, as a member of the Commission, formerly, and the charges brought by me during the present session. He states that the charges brought by me against him in '49, '50 and '51 were brought against the Commissioners as a body, and on the evidence of Mr. Smith, the petitioner; and that the charges brought by me against him this session were on my own responsibility as a legislator, and on my own cognizance. Now, that is not the case. The first time I made those charges, it was against the Report of the Penitentiary Commission, and against Mr. Brown as the leading spirit of that Commission. I think that it will be found that though Mr. Brown has tried with a great deal of zeal to show that all the statements contained in the petition of Mr. Smith were made against the Commissioners as a body, and that he could not be inculpated except as an individual; though that were so it would not affect the nature of the case. Though those charges affected all, and Mr. Brown were one of all, he must still be liable, though he was liable with the rest, and culpable with them. If he was guilty; if he was chargeable with misconduct it cannot free him if others were culpable with himself; but the evidence of Mr. Smith and Mr. Hopkirk, the chief witness for Mr. Smith, shows that Mr. Brown was the most culpable, that he got up the evidence and got up the charges, that he was the witness, accuser and judge; that he it was that got up the charges, and got up the whole of the case. And the evidence shows that he was the leading spirit of the Commission, that he prepared the evidence, that he prepared the draft Report, that he counted the very lines in the evidence, showing what was to be quoted and what was to be excluded. However, it is not correct to say that the charges brought by me as representing Mr. Smith were against the Commissioners solely and did not inculcate Mr. Brown. The Hon. John S. Macdonald says he was under the impression that they were directed against Mr. Brown particularly, but on reading the Report of the debate of that period he finds that that impression was wrong. Now I say it was right. Judge



Richards who was in the House of Assembly in 1851, and conducted the defence of the Commissioners and of the Report, and answered the attack made by me, states in his evidence that though the attack was made against the Report and the Commissioners, yet the chief part of it was against Mr. Brown. Mr. Casault, whose evidence has been impeached by Mr. Brown, is a gentleman of undoubted veracity and honor; and when Mr. Brown says he thinks it strange that Mr. Casault should remember what was said eight years ago, yet the facts given in his evidence show that it was not extraordinary. It was the first time he had been in Toronto, and he heard a very exciting debate, and very strong language used; he saw Mr. Richards in his place in the House defending the Commissioners, and saw him get up and saw him go to the bar and speak to a gentleman, whom he did not then know, and heard that gentleman, whom he afterwards found to be Mr. Brown, asking Mr. Richards to refuse the Committee. These are the facts proved by Mr. Casault. I will read a Report of the debate as an illustration of what I said at that time—it was reported in the *Globe*—to show that the charge was not made against the Commission, but that Mr. Brown alone was inculpated.

[Mr. Macdonald read an extract from the *Globe* of 1851.]

So that it is evident that the charges were made as strongly about falsification of evidence then as they were made the other day. They were made in the face of the House, and perhaps in the presence of Mr. Brown, in 1850.

Mr. Brown—No, I was in Kingston.

Mr. Macdonald—At all events, it was reported in his paper. He saw by those reports that the attacks were not made on the conduct of the Commissioners as a body, but expressly on him by name for all these offences. I do not know whether the editorial referred to the subject, but on turning to it I find the following article.

[Mr. Macdonald read again from the *Globe*.]

Thus it is clear that the charges made by me recently in the House formed no new case got up by me on the irritation of the moment, in consequence of the provocation offered to me on the spot. It was the reiteration of what I had stated before in the House in the exercise of my duty as a Member of Par-

liament, as the representative of a petitioner for redress. The Report was of course cited in the motions made for a Committee of Inquiry in 1850 and 1851. Mr. Smith's petitions of course were appealing to the House and to the Government against the Report, and they appealed of course against the whole of the Commissioners; but he states and he swears distinctly that the principal in the management of the Commission was Mr. Brown, that during his absence there was no attempt to brow beat the witnesses, and there was no attempt to put down the evidence unfairly. And Mr. Hopkirk swears that while Mr. Brown was present there were constant attempts to put down the evidence unfairly, and that in fact he was the presiding judge. These are the same charges I made the other day, and they were only the reiteration of the charges I made in 1850. The report of my speech made in 1850 I cannot find, and Mr. Brown informs me that it was not reported at all. I do not know that it was reported at all. Now, the House and the country are aware that those charges were made in 1849, and they know also that no Committee was asked for, by Mr. Brown or any of the Commissioners. Those charges were repeated by me in 1850, and I made a motion for a Special Committee and that motion was refused. At the time that I made that motion, the Hon. Adam Fergusson was standing below the bar of the House, and he got up the next day in his place in the Legislative Council, denied the truth of the charges contained in the petition of Mr. Smith, and said that he would demand a strict and searching investigation. Two of the other Commissioners, Mr. Brown and Mr. Bristow, were each of them in charge of papers, the *Pilot* and the *Globe*, and they said in the columns of their papers that they would see that a Committee was appointed at the next session to examine into those charges; and, in fact, expressed great indignation that the Government had not allowed it to go to a Committee. The motion was repeated by me in 1851, and I then laid Mr. Smith's petition before the House, and got the consent of the Government to appoint a Committee. I placed a copy of the petition in the hands of Mr. Hincks, who was at the time Inspector General, together with a list of the witnesses Mr. Smith intended to



bring to support the charges it contained, so that the Government had a full opportunity of examining the case. Mr. Hincks agreed to it, and actually agreed with me to the names of Members who were to be on the Committee. Mr. Hincks named the Members on the part of the Government and I on the part of Mr. Smith. The Hon. Mr. Fergusson said that he would insist on a Committee; Mr. Bristow said that he would insist on a Committee; Mr. Brown said that he would insist on a Committee; Mr. Hincks said that he would grant a Committee; the Government said that they would grant a Committee; and to my astonishment, when I made the motion in the House, the Government refused it! Was not that a strong proof that the Commissioners dare not grant a Committee, and a strong proof of the truth of what Mr. Casault stated that he had overheard in the gallery of the House. After stating in the strongest language in one of the Houses of Parliament and in two influential journals that the Commissioners would insist on a Committee, what could I think when I saw this sudden opposition but that Mr. Brown, against whom all the attacks were directed, was afraid that the matter should be investigated by a Committee; and I believe that when you remember what Mr. Casault has said it will be found that the whole objection came from Mr. Brown. I will read from the report published in the *Globe* in 1851, and it will be seen that Mr. Baldwin objected to my motion.

(Mr. McDonald read from the columns of the *Globe*.)

So that you see in 1851 the charges were made strongly and expressly, and were chiefly directed, according to Mr. Casault's recollection, and according to Mr. Richards' recollection, against Mr. Brown. Now, there is a long editorial in his paper, which admits that they had insisted on a Committee, and it goes on and gives the reasons why the Commissioners had changed their minds. What, then, could Mr. Smith think, or I think, or the public think, of the course adopted by Mr. Brown, and the Government, after the Government had agreed to a Committee, and Mr. Brown had insisted on it in his paper, and Mr. Bristow had insisted on it in his paper, and Mr. Fergusson had insisted on

it in his place in the Legislative Council, and that the Government should then refuse it,—what could I think but that Mr. Brown was afraid to allow the Committee to be appointed to go into an inquiry, and that the Commissioners were also afraid of an enquiry? It clearly shows Mr. Casault's recollection of the conversation between Mr. Brown and Mr. Richards to have been correct. I dwell on this for the purpose of pressing on the attention of the Committee the consideration that in making these charges against Mr. Brown at the beginning of this Session, I brought no new charges, but was then repeating in irregular phrase what I had formerly stated in regular phrase, and that I conceived from the information which had been given me that I had a right to throw them in the teeth of Mr. Brown. As to the ground taken by Mr. Brown that I said I would prove these charges of my own knowledge, Mr. Brown knows as well as any person can know that I could not prove the facts contained in those charges of my own knowledge. I was not a convict; I was not a discharged servant; I was not a witness before the Commission; I had not possession of the evidence. Mr. Brown kept the books of that evidence in his own possession, and never allowed them to leave him. I said I was as ready to prove those charges as I was eight years ago. I was not aware then of the death of some of the witnesses. If the investigation was made eight years ago, and the evidence had been taken then to support those charges, I think I could have shewn that they could have been clearly proved. It will be remembered that at the beginning of this investigation Mr. Brown took legal grounds; he attempted and succeeded in having it settled that the investigation should proceed on strictly legal rule. He got legal assistance, and got counsel to aid him in conducting his defence, which he had refused to Mr. Smith, an old man, a man with far less legal knowledge than he possesses, and who was labouring under a charge of higher criminality, and the consequences of which, if proven, would have been of much greater importance, much more injurious to him than these charges are to Mr. Brown. Every effort was made to throw the Committee off the scent and to frustrate the object for which it was named. Mr. Brown allowed seven or eight days to be spent by the Com-

mittee in hunting up secondary evidence, when he could at once if he chose have spared all that time by saying, "I have got the books at my own house, and can bring them." But he was at length forced to bring them down, and I beg to call the attention of the Committee to the fact that he took the ground that I had not sufficiently proved the destruction of the books to enable me to put in secondary evidence to sustain the charges, and the Committee sustained him, and kept me at a stand, yet he kept me there and did not offer to bring down those books. I can see what the intention was—to allow me to prove my own case as well as I could by secondary evidence, and then bring down those books for the purpose of rebutting the evidence, and impeaching the character of the witnesses by catching them in an inaccuracy. He makes a distinction between those books and the draft report, alleging that though the draft report may be incorrect, that that will not bear out the charge of falsification of evidence. That point has been discussed by the Committee, and decided, and I think decided correctly. It decided that this draft report must be taken. Mr. Brown says that in making out that report the Commissioners might have stated the conclusion they arrived at without giving any of the evidence. That is true, they might have stated their conclusions; but if they did give the evidence, or any extract from it, they should not have garbled or falsified that evidence. Mr. Smith, when he petitioned in 1850, and when I moved for a Committee, took it as a matter of course that the Government had the evidence before them. He never supposed that they would have discharged him with contumely and disgrace upon the mere report of the Commissioners without having the evidence before them; and when the Committee was struck in pursuance to the order of the House, I was told, much to my astonishment, that the books were destroyed. In 1851 Sir H. Lafontaine, when the subject came up again, agreed to examine the whole of the evidence, and I took it for granted that he did so, but it appears that he did not, and that he merely perused the evidence contained in this report. This report then was the only document furnished to the Government. The evidence contained in these original books are like the notes of a trial taken by a Judge for the satisfaction of his own con-



science. The Committee may see, then, how important it was to the prospects and the character of Mr. Smith, and his family, that the whole of this evidence should have been furnished to the Government—should have been furnished to the public *verbatim et literatim*. If it be falsified in the report furnished to the Government then the first charge is fully made out. That report is the only document coming from the Commission which was ever made public, and there is no doubt that the moment it appeared it became a matter of great public interest, that many of the witnesses examined it to see what they had been made to swear, and to see what conclusions were drawn from the evidence; that they said to each other, “I have not sworn this,” or “there is a wrong conclusion drawn here,” and they no doubt remarked that the evidence in favor of Mr. Smith was left out, while the evidence against him was put in. They saw this, and there was only one conclusion they would come to—that the report was drawn up for the purpose of crushing Mr. Smith. It was on this report they founded their opinions. They looked on it as the record of the proceedings of the Commission, and you have heard the statement of my counsel, Mr. Vankoughnet, himself a gentleman of high legal ability, that all the legal men in Toronto agree that it is the record. This is the document that Mr. Smith appealed against in his petitions. They formed their conclusions from the statement contained in this book. This is the instrument of wrong. This is the evidence that falsification was committed. Whether it was done by the hand that marked out these extracts from the original evidence I do not say. Who it was that garbled the evidence contained in the extracts given in that report I think I have shewn to the Committee. This is the report, garbled and falsified, that did the wrong. This is what I appealed against in the motions I made in 1850 and 1851. Now, Mr. Brown objects to the nature of the witnesses that I brought forward to sustain the charges—the two chief were Mr. Smith and Mr. Hopkirk. Now, I say that notwithstanding the report of the Commission, Mr. Smith’s character now stands as high as it ever did, as a good citizen, as a worthy and respectable man, as a worthy magistrate, and now filling an office of high trust in the Grand Trunk Railroad. Mr. Hopkirk is also a gentleman who has always borne a high character. Mr. Smith may be considered

to have every qualification as a witness for he never left the room from the time that the Commission opened till the close. He could therefore speak confidently as to the manner in which the proceedings of the Commission were conducted. Mr. Hopkirk, also, may be considered as well qualified to give evidence for his examination lasted for twelve days and a half. I cannot understand how it is that Mr. Brown proposes to impeach his testimony. He was personally cognizant of many of the circumstances which formed the subject of investigation; he was a firm friend of Mr. Smith and therefore intimately acquainted with all that occurred, not only with Mr. Smith's mode of managing the institution but with his views and opinions. I am perfectly sure that no objection can be taken to the character or standing of these two witnesses, and their evidence is conclusive upon the points on which they have been examined. It has been shewn by them that the evidence, as taken down by Mr. Brown, was the subject of frequent conflicts between him and the witnesses; and it has also been shewn to the Committee that the evidence so taken down has not been quoted correctly in the report. The Committee has decided that that report is the record of the proceedings of the Commission; and I want to show whether it was a true record or not, and compare it with the notes taken by Mr. Brown. I have not had time to go through more than three books of the evidence; but I beg to call the attention of the Committee to the interlineations of Mr. Brown, where the animus which guided him can clearly be seen; and even where the evidence is first taken down, before any interlineations are made, it will be seen that it is done in the strongest and most deliberate manner to give a coloring to the evidence against Mr. Smith. Where a witness was unwilling to swear to what was put in his mouth by Mr. Brown, it then became necessary for him to interline. There is no appearance of the evidence having been taken down too favourably anywhere towards Mr. Smith, and I would call the attention of the Committee to pages 108, 109, 116, 152, 169, 178, 192, 202, 252, 253, 410, (see Mr. Richards' evidence *passim*,) 413, 429 and 473. I did not go any farther. I did not peruse it farther as I might have done with the certainty of pointing out more instances of the same kind; but I wish merely to call



the attention of the Committee to those pages to observe the manner in which the evidence has been taken down, to observe that it was not merely the intention of Mr. Brown to content himself with taking down the evidence, but to take it down in the manner most damaging to Mr. Smith. Mr. Smith was on his trial on certain charges affecting in the most serious manner his reputation and character, and one of the most important points, so far as he was concerned, was that the character and respectability of his witnesses should stand unimpeached. The Commission knew that, Mr. Brown knew it, and the value of the evidence given in his favor was at once destroyed by the assertion that Mr. Smith had bribed the witnesses. You see that that struck at the very root of his defence, and threw doubt and suspicion over every statement made in his favour. In fact, it was a charge which, if not shewn to be wholly unfounded, would have destroyed his case and destroyed the usefulness of his witnesses. Well, here the charge against him says that he tried to bias the evidence of the witnesses who were to appear before the Commission. I will read from the printed report to shew the nature of this charge so far as it affected the convict Smith.

*(Extract read.)*

Now what was the effect of making that charge? The charge was made, and the evidence quoted and used for the purpose of making it appear that Mr. Smith had been in the habit of favoring this convict to make him a good witness, had bribed him with food, that when under bread and water punishment he ought to have got no other food, but that he always got a good ration, that in fact it was a sham punishment, that instead of being without food he always knew where to get his dinner, that he even got a full ration, that he could always get his full dinner except when confined to his cell. Now the meaning of that, if it means anything, for it was quoted under the head of bribing witnesses, and Mr. Smith was found guilty on this charge, means that Mr. Smith bribed this convict with food; and when Mr. Brown stopped his quotation at the word "cell," he did so because he knew that in the written evidence the very next words shew that neither Francis Smith nor Mr. Smith knew anything of the convict getting these rations. Francis Smith gave out the rations

to the convicts ; he knew nothing of this convict getting the food ; and there is an admission in the evidence of this man which destroys the whole charge founded by Mr. Brown on the garbled extract to which I have called your attention. He says that when he said he could get a full ration he meant to say that the convicts helped each other, that when convicts were on bread and water rations they knew where to get a full ration, because the other convicts would clandestinely save a portion of their rations for them. All this part of the evidence was omitted. Yet the Report affirms that the charge was fully proved. This man's testimony, taken in full, is proof that he had not been bribed by Mr. Smith, or by his son, who gave out the rations. One part of the evidence is used to shew that the charge was established,—that part which completely exculpates and acquits the Warden is left out, and Mr. Smith is declared to be guilty. Is not that a *suppressio veri*, a garbling of evidence, a most dangerous power to be assumed by a Judge ? The next point is the falsification of Henry Smith's evidence with regard to the beer that he received. Though this is a matter of minor importance, Mr. Smith was very sensitive about it. Now, it is very strange that in this case Mr. Brown had actually taken the trouble to select the words from the prisoner's evidence to be used in the report ; sometimes taking a few words from the middle of a sentence, and sometimes a few words from the end, leaving half of a sentence out, making out a case against the Warden, and omitting wholly what was in his favour. Now, by looking at the manuscript evidence that the words to be inserted in the Report are marked by quotations ; and in the printed Report the words are those, "Convict Henry Smith has had beer three or four times by order of the Warden's wife." Now here is a distinct quotation given for the purpose of proving that the Warden's wife, for whose misconduct the Warden might be supposed to be liable, gave beer to this convict. Then the passage next quoted says that "the convicts got beer from the Warden's servant, and was told that it was so by some of the other convicts ;" that was selected from the end of a sentence. Here it is made out, though it is a small matter apparently, it is made out with a great deal of industry by cutting out words here and there, and making one sentence out of parts of several sen-

tences, that these convicts were given beer by the Warden's wife. Now, it appears actually, by the manuscript evidence, that it was given him by his fellow convicts, and that the other convicts told him it was by her orders. And what does Mr. Smith say, that there was a barrel of such beer in the kitchen, and that those men got at it. The consequence is, that by neglect or misconduct of the Warden's wife, who left the beer in the kitchen, when the convicts were employed there they got at it, and this is converted into a charge that they got beer by order of the Warden's wife. The third case is more serious—Mr. Brown attempts to throw all the blame on the Commissioners when he can, and free himself, and he attempts to throw all the blame of the garbling on the head of Mr. Bristow; but it will be found that one half of the charge is in the handwriting of Mr. Bristow while the other half was in the handwriting of Mr. Brown. They were acting together, and getting the case up together. Now that case involved the charge of corruption in the management of the affairs of the Penitentiary, by paying Messrs. Watkins Mucklestone and Co. a higher price and for a heavier weight of iron than was required, and Mr. Smith is found guilty on the charge of this great act of fraud against the Penitentiary. It says, "it is clearly proved by the evidence of McCarthy, and admitted by the other witnesses, that the firm of Watkins and Co. being unable to supply a particular description of iron specified in their contract with the Penitentiary, entered into an agreement with the Warden to supply in its place iron of a larger size, with the understanding that they were only to be paid for the weight which a similar number of bars of iron of the contract size would have amounted to. The evidence of McCarthy is most direct—that the weight which he certified to in the bills of parcels under which Watkins and Co. were paid, was the actual weight furnished, without any deduction; and we can state from a personal inspection of the bills of parcels at the time referred to in the evidence (July, 1847), that they are regularly vouched by McCarthy without any remark on them which could lead to the impression that any deduction was made for such excess of weight. The only evidence to abut that strong array of facts is the declaration of Mr. Mucklestone that "to the best of his knowledge 5 or 6 cwt. were deducted on account of the larger size being furnished."



The evidence of McCarthy is, that the iron was heavier than that contracted for, and that it was paid for by weight; you will find in McCarthy's printed evidence that this is untrue, that in answer to Mr. Smith he says, "Mr. Mucklestone did not state that he was paid under this arrangement, but witness understood that he had been allowed what he stated about the iron in his accounts." You will also find that the quotation from Mr. Mucklestone's evidence is not correct in the printed report; but that he states most distinctly that the evidence of McCarthy that he got full price for the substituted articles is untrue. Yet they found him guilty of combining with Mr. Mucklestone to defraud the Penitentiary. By the evidence of Mr. Mucklestone, given in the Report itself, it will be seen that 5 or 6 cwt. was deducted on account of the larger size being delivered; and it will be seen that Mr. Horsey, the architect, who knew all about the contract, says that Watkins and Co. agreed that "they should only be paid for the price that the same lineal quantity of the proper size of English iron would have amounted to," and in his cross-examination by Mr. Smith he says he "considers that the institution was benefitted by this transaction to the amount of £20 or £30." In spite of all this they find that the Warden was guilty of combining with Mr. Mucklestone in a fraud, and they say that there was no evidence against it, and that although Mr. Mucklestone, in the evidence they quote, comes forward and states distinctly that it was false.

*Mr. Brown.*—No, he does not.

*Mr. Macdonald.*—I really wish that Mr. Brown would allow me to speak without interruption; I did not interfere with him when addressing the Committee, although he made many statements to which I took exception in my own mind. It is a most glaring instance of garbling evidence for the purpose of making out a case. Mr. Brown endeavours to throw all the blame of this garbling on Mr. Bristow, just in the same spirit which induces him to try and get rid of all blame himself. You will find that Mr. Brown was equally guilty in that most glaring case of garbling about the stove-pipes. On that charge Mr. Smith is found guilty of refusing to perform a contract; the only evidence given in the report is that of Quinn, who says he made a bargain with Warden for 1000 ends of pipe, it was not a legal contract,

Quinn says he had "a bargain." Now, Mr. Smith denies that, and the whole of the evidence which supports his denial is omitted. It was no interest of Mr. Smith to cheat Quinn or anybody else; it was his business to make contracts for the Penitentiary for such articles as were manufactured in it, and to furnish those articles on contract to the parties who wanted them. It will be observed that the rebutting evidence of the clerk, who says that there was an entry in the "work-book" of 30 ends of pipe, ordered by Quinn, is wholly omitted. The clerk says that Quinn got the 30 links which were ordered from McCarthy; Quinn finding that he had got a good bargain, and that he could sell the stoves-pipes for more than he paid for them, naturally enough was anxious to get more on the same terms, and ordered McCarthy to make some more for him. Now, the whole of the Clerk's evidence, shewing that the bargain was for 30 links, not for 1000, is left out of the report. I will not discuss the difference between contract and convict labour, but I must call the attention of the Committee to the manner in which the charge is made out against Mr. Smith that he has wasted the public money, and that the Penitentiary buildings cost 30 per cent. more than if they were built by contract. That charge is made and said to be established on the evidence of Coverdale. In order to meet Coverdale's evidence, Mr. Horsey, the architect of the Penitentiary was brought forward by Mr. Smith to prove that the difference was not 30 but 5 per cent., and that the advantage was on the side of the convict labour. Mr. Horsey swore that the work was as cheap as if it had been done by contract, and 25 per cent. better; but the object of the commission was to show that the Warden had been shamefully extravagant in using convict labour, and the report was framed so as to carry out that impression. The other charge to which I will allude is one of a very grave nature; it is a charge of barbarity and scoundrelism, which, if proved, would ruin the character of any man. No one could suppose that with a charge so grave as that of starving convicts, so that they could not support nature, and were too weak to work, any attempt would be made to deprive the accused of every tittle of evidence that could be adduced, yet you will find that Mr. Brown has passed over the evidence of Mr. Kirkpatrick very slightly, as if it were of no importance.



If the Commission had gone to work fairly it would have given Mr. Smith the full benefit of all the evidence, exculpating him from the atrocious charge of starving the poor unfortunate creatures who were placed under his control, and at his mercy; but if you will observe all the evidence brought to support this charge is in Mr. Brown's hand-writing, and he has not even taken the trouble to make a quotation from the evidence. All that he inserts in the draft report is that Mr. Kirkpatrick supposed that he saw food enough given the convicts to support nature. That is all he puts in of the palliating or rebutting evidence brought forward by Mr. Smith to relieve himself from this atrocious charge. Now, that report ought to have shewn that Mr. Kirkpatrick was not only one of the Inspectors for years, but was chairman of the Board, that he was in the Penitentiary again and again when the convicts got their meals and that he knew that they got food enough from his personal observation. Why, as a matter of common fairness, was not that evidence put in? But Mr. Smith was found guilty of starving the unfortunate wretches committed to his custody, of this most atrocious conduct, and in order to make him appear really guilty the evidence in his favor is treated slightly, while that which went to establish the charge which shewed that he had actually starved his prisoners is put in at full length. Mr. Kirkpatrick was in the Penitentiary every day; from the fact of his living next door he had peculiar facilities for attending from day to day in the discharge of his duty, and he says that he was there repeatedly when they were going to their breakfast and he thought that they were too well fed, he was present when they were at their dinner and he thought that they were too well fed, but not a word of this appears in the draft report; if ever there was a want of ingenuousness and a determination to make out a case, this proves it conclusively. The charge which Mr. Brown considers to be of great gravity is that of the convict Reveille, and I must call the attention of the Committee to the subject: the charge as regards the Warden is that of having goaded Reveille into a state of insanity, by repeated floggings and punishment of every kind. Here is one of the gravest charges that could be made against a man—that of depriving a fellow-being, and that fellow-being a woman, of her reason, by a long course of brutal treatment.

The observations that I made in the other case, are the same that I should make in this, that every extenuating circumstance, every point of evidence which could throw any doubt on such a charge should be given ; but on reference to the printed report sent to the government, you will find that the contrary is the case, that the evidence shewing the punishments inflicted on this convict is given most voluminously—and here I may remark that Mr. Brown says that no importance is to be attached to Mrs. Chase's evidence, that she committed perjury. Now, if that was the case, why was it quoted in this report ? If it was to be used at all it should have been quoted fairly and honestly.

*Mr. Brown.*—What answer was it to say that it should not be given at all ?

*Mr. McDonald.*—That is no answer to the charge that that part of the evidence which is of no consequence in freeing the Warden from that charge is quoted in this report, and that that portion which would acquit him from this charge is left out. From her evidence it appears that this convict was insane for some time, and had been put under her charge ; that she saw her morning, noon and night ; and that the punishments inflicted on her had nothing to do with the cause of her insanity. Now, I say that the argument that this woman, Mrs. Chase, committed perjury, and was not a competent witness, is no answer to the statement that I make that that portion of her evidence which would acquit the Warden is left out, and that another portion of her evidence, wholly immaterial, is quoted. I do not know why this portion of the evidence was quoted, except for the purpose of shewing that such a person as Mrs. Chase lived, and was examined. There is a stop, and then three asterisks after the portion of her evidence which is quoted, to shew that that is the end of the quotation ; and would you believe that it actually stops in the middle of a line ; that this evidence which is of no consequence at all is quoted, and that the very next sentence, which is the only part of her evidence that is worth a farthing, is left out ? “That Reveille has said she was not insane ;” and if the woman was not insane, then her statement should go for something. “That Reveille said”—this was after Mr. Smith had been ejected from the Penitentiary—“that if Mr. Smith was there she would not be in that state ; that he

was the best friend she had ; that she also missed Mrs. Smith." Here is a charge of gross cruelty brought against the Warden ; here is the evidence garbled for the purpose of shewing that he had committed that cruelty ; and here is the woman's own statement that instead of being cruel he was very kind to her and that his wife was very kind, and that if he was back she would not be in such a state, all left out.

Mr. *Wilson*.—In what way would you make the statement of the convict refer to Mrs. Chase's evidence ?

Mr. *McDonald*.—What I say is this ! if Reveille was not insane, and stated that she was satisfied with the way in which she was treated by Mr. Smith, instead of being treated with gross cruelty, Mr. Smith ought to have had the benefit of that statement in the printed Report.

Mr. *Wilson*.—When was that statement made ?

Mr. *McDonald*.—The very morning that Mrs. Chase gave her evidence. Now, I ask any fair dealing man, any man who would deal with this case as he would wish to be done by, if that is an honorable and a just mode of dealing with the evidence. If it is not a decided suppression of evidence for the purpose of bolstering up a most horrid and abominable charge ; there was the the evidence of a woman who said that she saw the woman Reveille that morning, that this woman said she wished to return under the care of Mr. Smith because he treated her kindly, and that evidence is suppressed while Mr. Smith is found guilty of the charge. I think I have gone over all the charges of falsification of the record that I have had time to go into. There are, however, one or two other cases to which I would wish to call your attention : one is a case partially proved by Mr. Smith, and proved altogether by Mr. Hopkirk. It was the wilful distorting and misrepresentation of Mr. Hopkirk's evidence by Mr. Brown. Mr. Hopkirk had given his testimony before the Commission and it was closed and subscribed. He was kept days and days afterwards giving new testimony, and as he was giving it Mr. Brown said "stop ; you swore so and so the other day," "No, I did not" said Mr. Hopkirk Mr. Brown opened the book and said "you did ;" Mr. Hopkirk said "I did not." Mr. Brown read the passage to him, and said "these are your very words." Mr. Hopkirk was convinced



that they were not, and asked to be allowed to see the book. Mr. Brown refused, but the other Commissioners forced him to allow Mr. Hopkirk to read his evidence; and, on looking at the passage, he found that Mr. Brown had written the statement one way, and read it to him another way. There was a distinct and flagrant falsification of evidence if ever there was one. The last case is that of Dr. Sampson's letter. That is no new case, for I have read from the *Globe* that I made those specific charges in 1849 and 1850, in the year in which the event happened which called forth that letter; and I made those charges in the House of Assembly. Both Mr. Hopkirk and Mr. Smith proved and attested the truth of that statement. They say that Mr. Brown produced this document in evidence, and that it was only half of a letter not the whole; Mr. Brown will say that it was a fair extract of the portion he wished to use, but that was not for him to judge. When Mr. Hopkirk said that it was not the whole letter, Mr. Brown said that "it was, and that he had copied it that morning from the original." So far from that being the case it was actually only a portion of the letter, the letter was in the Warden's possession, and he had never seen it. It is clear that one or the other of these parties told calmly and deliberately what was false. I do not wish to state which of these parties has done so; but here is proof of the truth of the charge that I made. Credible men told me these facts; and I stated them in my place in the House. All that I want to say is that these charges were not trumped up by me, but that when I made them I had good reason to believe them to be true. Whether I would rather believe the persons who told me that, or Mr. Brown, I do not choose to say. If the Committee will look at that letter of Dr. Sampson they will see the very important nature of the correspondence, that it was most important to the interests of Mr. Smith that the half of that letter should not be produced alone, and that the omission of half of it was most prejudicial to him. Mr. Smith naturally was indignant at the production of a mutilated correspondence in evidence against him, said that it was only the half of the letter. Mr. Brown said that it was not, and gave his honor that it was the whole letter.

Mr. *Brown*.—There were three judges there who say that is false.

Mr. *McDonald*.—I have proof that I was correct. I have proof that the charge I made was well founded, I do not wish to say that Mr. Brown was guilty of the charges contained in the petitions I presented to Parliament, and which I repeated on the authority of those petitions. All that I want to shew is that I had authority to say from the statements made to me by the petitioner and other credible persons that it was so. God knows no man has regretted more bitterly than I do that I used the language which has led to this investigation in a moment of irritation. If the copy he produced was a copy from a draft of the letter he should have copied the whole of it, and not copied a half. Now what I state is that this proof by two witnesses is distinct, that in this case there was a falsification of evidence. Whether they are to be believed I do not say. All that I say is that I brought the proof here to sustain the charge, and that proof is before the Committee. Now, with regard to the two last charges of suborning evidence, and getting convicts pardoned, they are nearly identical. Pardoning convicts because they gave evidence unfavourable to Mr. Smith, and suborning evidence are the same. There is nothing so difficult to prove as suborning perjury, because it can only be proved by the man who was guilty of it, and we say at once that such a man is not worthy to be believed on oath, so that in all cases of subornation of perjury, if improper inducements are held out to witnesses to give false testimony, you can only draw your conclusions from circumstances, not from the evidence of the men who committed the act of perjury. Now, that evidence exists of most unwarrantable and suspicious conduct on the part of the Commissioners is clear, and beyond a doubt, not only with regard to convicts, but, as I stated in my speech in the House of Assembly, towards all the witnesses, towards guards and dismissed officers of the Penitentiary as well as with respect to convicts; if it is clear that inducements were held out to witnesses, inducements that no man can get over, situated as these men were; then there is strong evidence in favour of the argument that I am about to use; Every officer of the Penitentiary that gave evidence in favour of Mr. Smith was dismissed. Mr. Smith swore that. I think that he



states they were dismissed, and in the statement I made at the time I presented his petition, from the particulars furnished to me by Mr. Smith, I think that I alleged that that was the case. In his petition he uses these words ; “ that threats were held out against the petitioner ; ” this petition was presented in 1850, “ thirteen officers were examined ; all gave evidence in favour of the petitioner ; all were dismissed.” He also says that there were three other officers who gave evidence in his favour, the architect, the clerk, and Mr. Pollard ; ordered to be dismissed. I believe that Mr. Pollard resigned for fear of being kicked out, and that the other two held on by some means or other. Well, when you find this fact that all the witnesses who were under the control of the Commission, and sworn upon the Bible to give their testimony truly, and some of them were as respectable as any men in Canada, I can bring all Kingston to prove that, and when they gave their testimony according to their conscience, because that testimony was in favour of the Warden, and thirteen of them were kicked out, I ask if it does not strike the mind of any honest man that the witnesses were tampered with ?

Mr. *Brown*.—It is false.

Mr. *McDonald*.—I must ask the Chairman if I am thus to be interrupted ? I put myself under the protection of the Chairman. Are the statements that I make here to be termed “ false ” by Mr. Brown ? I speak from the evidence. I state most distinctly that Mr. Smith repeated the names of the officers who were dismissed.

Mr. *Brown*.—They were dismissed by the Inspectors.

Mr. *McDonald*.—If I remember correctly, they were dismissed by the Commissioners, and, if I remember rightly, I think you will find these words in Mr. Bristow’s evidence “ that they were dismissed for valid and sufficient reasons.”

Mr. *Brown*.—Not a word of it.

Mr. *Stevenson*.—Here it is in Mr. Bristow’s evidence.

Mr. *Macdonald*.—Well, I hope that I will be allowed to go on without any more interruptions from Mr. Brown. I am arguing the case as best I may. I do not wish to prostitute the evidence in any way. I speak of it from recollection, for I have not read the evidence at all. I say that it was stated by myself in Parliament in 1849, and 1850, and it was stated by Mr. Smith with as

much solemnity as if he were under oath, that those men were kicked out, and deprived of their places and emoluments, because they gave evidence in his favour. Well, as it was evident, that there was a large number of discharged guards and keepers of the Penitentiary, who had been discharged by Mr. Smith, these were all industriously taken up as witnesses against him, and they of course, combined for the purpose of ejecting him from the institution. He had reported them to the Inspectors for misconduct or negligence, and they had been dismissed, and were rankling with hatred against him, for the position and the emoluments at that time were much sought after. If you look at the evidence, you will find that the whole of the case was got up by men who had a bitter, rankling hatred against Mr. Smith, that it was got up at meetings held at Dr. Sampson's house, that it was got up at meetings held with Mr. Brown.

*Mr. Brown.*—It is untrue.

*Mr. Macdonald.*—It is untrue ! I say that it is established by the evidence.

*Mr. Brown.*—There is not a word of it. It is false.

*Mr. Macdonald.*—I must ask the protection of the Chairman from these repeated interruptions and insults by Mr. Brown. I am satisfied that there is such a statement in the evidence, that this case was got up at meetings held for the purpose, but I am not sure that the name of Mr. Brown was mentioned. Now, I call the attention of the Committee to the case of the man named Robinson. He was a guard, and was brought before the Inspectors on a charge of leaving the gate open, and having two stone jars in his sentry-box. He was brought before the Inspectors on this and similar charges, and said that he expected no justice from them, or something of that kind, and without going into the case they dismissed him very properly for his insolence. That man was, of course, embittered against Mr. Smith, gave testimony against him, was as a reward for it again appointed a guard by the Commissioners, and is now a convict in the Penitentiary, having actually arranged plans for burglary with the convicts who were leaving the Penitentiary, and who were harboured at a small tavern kept by his wife near it. All I have to say, is, that those officers who gave evidence for the Warden were punished by the loss of their places, and those who

gave evidence against him were favoured. It does not appear at whose instigation, or at whose recommendation it was done. However, he who gave evidence against the Warden was favoured if he was a dismissed guard, and he was pardoned if a convict. The murderer Cameron, gave evidence against the Warden, and was pardoned, not immediately. On the contrary, the Government would not agree to the recommendation for a pardon; but that makes the case still stronger. Here is a man that was sentenced for murder, the murder of his own wife, the Government refused to pardon him, but strong representations were made and the pardon was at length granted. I don't mean to say that the convicts were pardoned at once, but that they were promised their pardon if they would give evidence against the Warden. What I want to point out to the Committee is this: Cameron, the murderer, gave evidence against the Warden, and his recommendation for pardon is in the handwriting of Mr. Brown; that is a fact. Then there was Deblois, he was a notary, a man of considerable information and astuteness, and therefore very useful as a witness. He gave evidence on several occasions against the Warden. In all, I believe, he was examined three times. With respect to that man, it was proved before the Commissioners at Kingston, and taken down in the handwriting of Mr. Brown, by two witnesses who came and swore that Deblois had stated to them that he had been promised his pardon. A convict of the name of Smith, and a guard of the name of Martin both swore that Deblois had informed them that he was to be pardoned; and they both stated at the same time that they would not believe the man whose evidence the Commissioners were so anxious to obtain, under oath. Now, these men could not have dreamt that, they could not have imagined that.

*Mr. Wilson.*—Was not that the man that Mr. Smith had recommended for pardon?

*Mr. Brown.*—Certainly.

*Mr. Macdonald.*—In pages 487 and 488 of the original evidence you will find in Mr. Brown's own handwriting the evidence of these two men, convict Henry Smith, and guard Martin, that convict Deblois told them on the first day that he gave evidence that he had been promised his pardon. Here is an officer of the Penitentiary who swears that this man informed him that he was



to be pardoned ; and then we have the convict Henry Smith, who, I am bound to say in fairness, gives his evidence in very unsatisfactory terms before the commission, he too swears that Deblois told him that the Commissioners were to get him his pardon. Here is the evidence, here are two witnesses who swear to that fact.

*Mr. Brown.*—Precious witnesses ?

*Mr. Macdonald.*—I cannot speak to that ; but I can speak to this ; Deblois was examined by the Commissioners after Henry Smith's evidence was taken down by Mr. Brown himself ; after this, Smith and Martin had sworn that he was used again, and evidence was given to show that Mrs. Smith, the Warden's wife, had tried to bribe the witness. Although it was sworn before their own faces by those two men that they would pardon him if he spoke all he knew ; the Commissioners did not venture to ask him if he had said so to those two men, but the attempt was made to make it appear that old Mrs. Smith had tried to bribe him. Here, in the first place, are these two witnesses swearing that Deblois had told them this ; and then here are the Commissioners bringing up this man as evidence against Mr. Smith, and attempting to make it out that old Mrs. Smith tried to bribe him ! Now, add this last fact to all this evidence—that this man, Deblois was pardoned on the recommendation of the Commissioners in a letter written by Mr. Brown himself, stating that he was a fit subject for pardon, but that he should not be informed then of his pardon as he was at the time giving evidence before the Commission. Now, he came out very strongly on 1st September, 1848 ; and it will be found immediately after a petition was sent to the Government from Lower Canada praying for his pardon—a petition evidently got up somewhere else, and sent down to Lower Canada for signatures—then the Government in the usual form sent the petition back to Kingston to the Commissioners to report on it ; and here is the report written by Mr. Brown himself.

“ I am instructed by the Commissioners to state for the information of His Excellency, that the conduct of Deblois, while in the Penitentiary, has been very good, and that in the opinion of the Commissioners, he is a fit subject for the exercise of the Royal clemency.”

“In their investigation of the affairs of the Penitentiary, the  
 “Commissioners have availed themselves, to a limited extent, of  
 “convict evidence, and important testimony, adverse to the  
 “management, has been given by several convicts, whose general  
 “conduct has been meritorious; of these Deblois is one.  
 “The Commissioners have in consequence deferred for the present,  
 “bringing such cases under the notice of His Excellency the Governor  
 “General, to avoid misconstruction, or prejudice to the officers on their  
 “defence. Should His Excellency see fit to extend to Deblois the Royal  
 “pardon, the Commissioners would respectfully submit whether the  
 “intimation of it might not be advantageously suspended, until the  
 “officers of the Penitentiary have closed their defence.”

“I have, &c.,

“ (Signed,)      GEORGE BROWN.

“Secretary.”

Which means simply this: This man was a useful witness; here he is on 1st September giving secret evidence against Mr. Smith, and immediately after telling two other persons that he has been promised his pardon by the Commissioners; almost immediately after a petition comes up from Montreal praying for the pardon of this man, and referred by the Government to the Commissioners; on the 7th October the answer is sent down to the Government reporting favorably on the petition, and adding that the prisoner must not be yet acquainted with the fact of his pardon; on the 9th of October he was again brought before the Commissioners to give testimony, and in November after they had extracted every admission from him, and he had been kept up to that time under their thumb at their control and at their mercy with the promise of pardon held out but not granted, they dismissed him. Let me recapitulate: Deblois was first sworn on 1st September, 1848, and gave startling and tremendous evidence against the character of Mr. Smith; a petition came up from the Government at Montreal, asking for his release on 14th October. Mr. Smith swore that Deblois had told him on 1st September (on the first day he gave evidence) that he was to be pardoned. Mr. Brown wrote to the Government that he was a



fit subject for pardon, but that his pardon should not be communicated to him then for fear of misconstruction being put on it, and after he was no longer useful he was pardoned. Now, if Mr. Brown wished to act fairly toward Mr. Smith, and wished to obtain the evidence of this man free from undue influences he should have let him out of the Penitentiary. If Deblois was out of the Penitentiary before he gave his evidence, he would have been a free man, and would have given his evidence free from the influences and free from the bias which the hope of a pardon necessarily produces on him. But no ! Mr. Brown kept him under lock and key, under his thumb, and he was led to suppose, to believe that his pardon rested on his giving evidence against Mr. Smith. I appeal to every man of fairness whether Mr. Smith was not perfectly justified in believing that the Government influence was used in getting up this evidence against him, and that the Commissioners lent themselves to the project to crush him and drive him out of the Penitentiary with disgrace ?

I am sorry that I have detained you so long, but it is a matter of grave importance both to myself and Mr. Brown ; and I hope you will come to the conclusion that the charges I made against him at the beginning of this session are no new ones, and were not trumped up by me ; but that they were hastily and under great provocation repeated—the irregular reiteration of well founded charges brought by Mr. Smith against him, and reiterated on former occasions in my place in the House.





